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No. 332

In the

Supreme Court of the United States

October Term, 1958

RICHARD FONK and AMY FONK, Appellants

vs.

THE TOWN OF YORKVILLE, Appellee

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF WISCONSIN

JURISDICTIONAL STATEMENT

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OPINIONS BELOW

The memorandum opinion of the Circuit Court of Racine County, Wisconsin (R. 59-69) is not reported, and is set forth in the Appendix, *infra*, pp. 15-27. The opinion of the Supreme Court of Wisconsin (Appendix, *infra*, pp. 27-35), reversing the judgment of the Circuit Court, is reported at 3 Wis. (2d) 371. An earlier opinion of the Circuit Court of Racine County (R. 27-36) granting summary judgment to the plaintiff, and the opinion of the Supreme Court of Wisconsin reversing that judgment of the Circuit Court, (274 Wis. 153, 79 N. W. (2d) 666), do not deal with issues involved in this appeal.

JURISDICTION

This action was commenced before Hon. Herbert Wilks, Justice of the Peace, Racine County, Wisconsin by The Town of Yorkville to impose a forfeiture against Richard Fonk and Amy Fonk for alleged violations of Sec. 2.002 of the Ordinances of the Town of Yorkville, Racine County, Wisconsin, limiting to 25 the number of trailers in any one trailer camp. The ordinance was enacted under the provisions of Sec. 60.297, Wisconsin Statutes (1949), since repealed and amended and recreated as Sec. 66.058, Wisconsin Statutes (1953). On appeal to the Circuit Court of Racine County, there was a trial, *de novo*, wherein it was alleged that portions of the Ordinance and enabling Statutes were repugnant to the Constitution of the United States and therefore invalid.

The Supreme Court of the State of Wisconsin sustained the validity of the ordinance and Statute and held that the same apply to the appellants, and reversed the judgment of the Circuit Court of Racine County on February 28, 1958. (Appendix, *infra*, pp. 27-35) On May 6, 1958, the Supreme Court of Wisconsin denied, without opinion, the motion of Richard Fonk and Amy Fonk for a rehearing. On July 7, 1958, Richard Fonk and Amy Fonk filed a Notice of Appeal to the Supreme Court of the United States with the Supreme Court of the State of Wisconsin.

Jurisdiction is conferred on this Court by 28 U. S. C., Sections 1257 (2) and 2101 (c). *Poulos v. State of New Hampshire*, 345 U. S. 395, 73 S. Ct. 760, 97 L. Ed. 1105, 30 A. L. R. 987 (1953); *Breard v. City of Alexandria, La.*, 341 U. S. 622, 71 S. Ct. 920, 95 L. Ed. 1233 (1951); *Hammer-*

stein v. Superior Court in and for Los Angeles County, 340 U. S. 622, 71 S .Ct. 521, 95 L. Ed. 586 (1951); *Terminello v. City of Chicago*, 337 U. S. 1, 69 S. Ct. 894, 93 L. Ed. 1131 (1949).

STATUTES INVOLVED

Ordinances of the Town of Yorkville, Racine County, Wisc.:

> *SECTION 2.002 AMENDMENT OF ORDINANCE.* Subsection (1) of Section 2.02 of the Ordinance adopted by the Town of Yorkville in Racine County, Wisconsin, on the 19th day of September, A. D. 1949, entitled "An Ordinance of the Town of Yorkville in Racine County, Wisconsin, relating to the Establishment and Maintenance of Trailer Camps," be and the same hereby is amended so that said Subsection shall read as follows:
>
> (1) *License Required.* No person shall construct, establish, place, operate, maintain or offer for public use, with or without compensation, any trailer camp in the Town without first obtaining a license so to do from the Town Board. Not more than one such license shall be issued by the Town Board for any such trailer camp to be located in any common school district area in the Town. No such license shall be issued by the Town Board for any such trailer camp located in the Town wherein provisions is made or proposed to be made for the location of more than 25 trailers at any one time; and not more than 25 trailers shall be located in any licensed trailer camp in the Town at any one time.

Wisconsin Statutes (1949)

Sec. 60.297 (3) (a) License. Each town board adopting such ordinance may grant a trailer camp license to a person of good moral character who is the operator of a trailer camp upon filing application for said license on the form prescribed by the town board and otherwise complying with the terms of such ordinance, including the payment of the prescribed annual license fee. The town board may by such ordinance limit the number of licenses for trailer camps in any common school district area and may also limit the number of trailers that may be parked in any one camp.

Wisconsin Statutes (1953)

Sec. 66.058 (2) (b) In order to protect and promote the public health, morals and welfare and to equitably defray the cost of municipal and educational services required by persons and families using or occupying trailers, mobile homes, trailer camps or mobile home parks for living, dwelling or sleeping purposes, the city council in every city, the village board in every village and the town board in every town is hereby authorized and empowered to establish and enforce by ordinance reasonable standards and regulations for every trailer and trailer camp and every mobile home and mobile home park; to require an annual license fee to operate the same and to levy and collect special assessments to defray the costs of municipal and educational services furnished to such trailer and trailer camp, or mobile home and mobile home park, and limit the number of units, trailers or mobile homes that may be parked or kept in any one camp or park, and may also limit the number of licenses for trailer camps or parks in any common school district. The power conferred on cities, villages and towns by this section is in addition to all other grants and shall be deemed limited only by the express language of this section.

QUESTIONS PRESENTED

1. Are the provisions of Section 2.002 of the ordinances of the Town of Yorkville, which limit the number of trailers that may be kept in Appellants' trailer camp at any one time to 25, an unreasonable exercise of the police power and repugnant to the Constitution of the United States and therefore invalid?

2. Is the provision of Section 66.058 (2) (b) Wisconsin Statutes (1953) which provides that a town "may limit the number of units, trailers or mobile homes that may be parked or kept in any one camp or park," as here construed and applied by the Supreme Court of Wisconsin, an unreasonable exercise of the police power and repugnant to the Constitution of the United States, and therefore invalid?

3. Have the appellants, by virtue of full completion of 23 trailer spaces and partial completion of 24 spaces prior to the effective date of the 25 trailer limitation, and the moving of the 24 partially completed spaces to another area after the effective date of the limitation, acquired a vested right to place more than 25 trailers in said camp at one time, to the extent that the subsequent interference therewith is repugnant to the Constitution of the United States and therefore invalid?

STATEMENT OF THE CASE

On September 19, 1949, the Town of Yorkville passed an ordinance to regulate the establishment of trailer camps. On October 13, 1949, Sec. 2.002 of the ordinance was enacted so as to amend the ordinance to provide that not more than 25 trailers be located in any trailer camp in the town at any one time, and that only one camp be located in any common school district. (R. 17)

In the spring of 1949, and prior to the adoption of any trailer ordinance in the town, Richard Fonk and Amy Fonk commenced operation of their trailer camp or mobile home park. (R. 87) At that time there were 23 spaces fully completed and occupied and another 24 spaces partially prepared for trailer occupancy by grading, staking out roads, installation of drain title, and installation of service head, with meters and switch boxes. (R. 87-88)

After the effective date of the ordinance in question, the appellants determined to have a playground in connection with their mobile home park. They acquired an additional one (1) acre of land adjacent to the west line of the original park, but instead of having the playground on this one acre, they moved the service heads, meters, and switch boxes from the area set up for the 24 spaces to the one acre plot, and used the 24 space area for a playground. (R. 88, 91, 92)

On February 15, 1954, the Fonks had 31 trailers in their camp. (R. 83) On February 20, 1954, the town of Yorkville commenced a forfeiture action against appellants (originally in justice court) to enforce a penalty for a violation of Sec. 2.002 of the ordinance. Answering the town's com-

plaint (upon trial *de novo* in circuit court), appellants alleged as an affirmative defense that the 25 trailer limitation of the ordinance was invalid for the reason that it violates the constitution of the State of Wisconsin and the Fifth and Fourteenth Amendments to the United States Constitution. The answer further alleged that if sections 60.297 (3) (a) of the Wisconsin Statutes (1949) and Sec. 66.058 (2) (b) Wisconsin Statutes (1953) authorized such a blanket limitation, then said provisions were invalid and void in that they violate the constitution of the State of Wisconsin and the Fifth and Fourteenth Amendments to the United States Constitution. Appellants also alleged in their answer that the ordinance could not be applied to them because of their vested right to a trailer camp with a capacity of more than 25 trailers. (R. 5-6)

The town moved for summary judgment, and the Circuit Court of Racine County granted the motion, which was reversed by the Supreme Court of the State of Wisconsin, which ordered a trial on the merits. (R. 51-56)

At the trial the evidence was undisputed that both Mr. and Mrs. Fonk put in 8 to 10 hours a day in connection with the operation and maintenance of the mobile park. (R. 129) The rent for each trailer space is $21.00 per month. $5.00 of that goes to the town for school taxes. Eighty to eighty-five per cent of the spaces are usually occupied at any given time. (R. 132) The bulk of the expenses of running the park are fixed. (R. 132) During the year 1956 when there were 41 spaces available, the total rentals for trailer space were $9,263.40 and expenses were $5,125.57, making a net profit of $4,137.83. This does not account for any deduction for depreciation, owners' labor, return on investment, or

cost of maintaining the recreation room and playground. (R. 133)

It was also established that if the park were limited to 25 available spaces, the gross rents would be about $5,-292.00, based on 85% average occupancy according to the experience of the park. (R. 132, 134) The net profit would then be approximately $1,304.92. In this computation, the low net results primarily from the high proportion of fixed expenses, characteristic of this business. This figure also makes no provision for depreciation, owners services, return on investment or cost of maintaining the recreation room and playground. (R. 134-135, 140-141) The cost of installing each trailer space is about $1,000.00. (R. 88)

The Circuit Court of Racine County found that the 25 trailer limitation was *not* related to the protection of the public health, morals and safety of the people of the town of Yorkville. On the other hand, the court found that the ordinance *was* related to the general welfare of the people because it protected the school district from over-crowded facilities and enabled the school district to plan for necessary expansion. The Circuit Court concluded that the 25 trailer limitation was not unconstitutional; that Sec. 66.058 (2) (b), Wis. Stats. (1953) grants the town the power to place a limitation of 25 trailers on any licensed camp in the town without regard as to its physical facilities and capacities and that such grant of power is not unconstitutional. (R. 73) However, the ultimate judgment was for appellants on the ground that prior tothe effective date of the ordinance, appellants had 23 spaces ready for occupancy and had made substantial improvements on 24 additional spaces. (R. 73) The court concluded that the appel-

lants had a vested right to place 47 trailers in their trailer camp as a nonconforming use. (R. 74)

From the judgment thereupon rendered in favor of the appellants, the town of Yorkville appealed to the Supreme Court of the State of Wisconsin. Appellants sought a review of the Trial Court's conclusion that the ordinance and statute in question were valid. Thus, all issues were before the Supreme Court of Wisconsin. (R. 216) The Wisconsin Supreme Court reversed the Circuit Court of Racine County and ordered judgment for the town of Yorkville. (R. 213) The court agreed with the Circuit Court and sustained the validity of the ordinance on the ground of its reasonable relationship to the welfare of the school district and also sustained the validity of Sec. 66.058 (2) (b) Wis. Stats., (1953) as construed by said court to permit a town to set blanket limits on the number of trailers that may be kept in any one camp without regard to its physical capacity. (R. 219) Unlike the Circuit Court, however, the Wisconsin Supreme Court held that the appellants do *not* have a vested right to operate a 47 space trailer camp on the land on which those spaces are now situated. (R. 220-21)

THE QUESTIONS ARE SUBSTANTIAL

I. The Wisconsin Supreme Court Ruled Against Appellants' Claim To Protection By the United States Constitution.

The appellants claimed that the 25 trailer limitation of the Yorkville Ordinance and the enabling Wisconsin Statute were repugnant to the United States Constitution at the earliest possible stage in the litigation, their answer to the

town's complaint. In fact, an earlier appeal in this case dealt only with the *right* of appellants to raise and litigate the constitutional issues involved. (R. 51-56) See *Town of Yorkville v. Fonk*, 274 Wis. 153, 79 N. W. (2d) 666 (1956).

The facts concerning appellants' technical violation of the ordinance were stipulated on the record. (R. 83-84) The balance of the trial record deals exclusively with the reasonableness of the 25 trailer limitation, its relationship to the health, safety, morals and welfare of the people, its arbitrariness and oppressiveness, and also its interference with property rights already vested under the United States Constitution. The decision of the Wisconsin Supreme Court expressly rejected the appellants' claim of protection under the United States Constitution, both as to the validity of the ordinance and as to the applicability of the ordinance to them by virtue of their prior use of the property.

On the basis of the final determination of the highest Appellate Court of the State of Wisconsin, the appellants now stand convicted of violating the 25 trailer limitation of the Yorkville Ordinance. This conviction depends upon the validity of the ordinance as against the claim that it is repugnant to the Fourteenth Amendment of the United States Constitution. The Wisconsin Supreme Court's determination of validity satisfies the statutory requirements for review by this court on appeal. 28 U. S. C. 1257 (2). *Poulos v. State of New Hampshire, supra.*

II. Substantial Property Rights Are Affected.

It is undisputed on the record in this case that the validity of the ordinance in question will effectively prevent the use of appellants' land as a trailer camp. If the 25 trailer limitation is in force, appellants cannot even realize a fair return on their investment in trailer spaces ($1,000.00 per space), much less realize some compensation for the eight to ten hours per day required to run the camp. There is no showing in the record that the land could be utilized for other purposes, and it is apparent that the appellants' substantial investment in their property would be taken from them by the 25 trailer limitation of the ordinance in question.

Neither the trial court nor the state Supreme Court answered the constitutional issues raised by the *effect* of this 25 trailer limitation on the appellants. The operation and effect of an ordinance is one of the basic tests to determine whether it meets the requirements of due process. *Missouri Pacific Railway Co. v. Norwood*, (D. C. ARK.) 13 F. Supp. 24, affirmed 290 U. S. 600, 54 Supreme Court 227, 78 L. Ed. 527; *Dederick v. Smith*, 88 N. H. 63, 184 Atl. 595, Appeal dismissed 299 U. S. 506, 57 S. Ct. 38, 81 L. Ed. 375; *State v. Maine Municipal Water District*, 17 Cal. (2d) 699, 111 Pac. (2d) 651; *Nebbia v. New York*, 291 U. S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469.

The statute and ordinance involved in this case are also important to the large trailer industry in this country. Mobile homes are being utilized by more and more citizens, and there should be an effective determination of the power of a state and municipality to prohibit mobile home parks

by reason of such restrictive regulations. *East Coast Lumber Terminal v. Babylon*, 174 F. (2d) 106, 8 A. L. R. (2d) 1219.

III. The Issues Have Not Been Settled By Prior Decisions.

This is a case of original impression, and a similar set of facts does not appear in any reported case in this country. No blanket limitation on the number of trailers that may be kept in one camp has yet been tested by the final authority as to whether such regulation meets the requirements of due process within the meaning of the Fourteenth Amendment of the United States Constitution.

The general principles to be derived from prior holdings of this court with relation to due process are not conclusive of the issues raised by the facts of this case. Whether the ordinance and statute are so arbitrary and oppressive as to violate the principles of due process, can be tested only by the facts of the specific case itself. If a statute or ordinance is arbitrary and confiscatory in operation and effect, its validity is open to question in the light of the conditions presently existing. *Nebbia v. New York, supra; Nashville C. and St. L. R. Co. v. Walters*, 294 U. S. 405, 55 S. Ct. 486, 79 L. Ed. 949.

The determination of the issues raised on this appeal requires an examination of the record, which, it is submitted, will disclose a total absence of factual or legal foundation for the 25 trailer limitation of the Town of Yorkville Ordinance.

CONCLUSION

For the reasons stated, the questions presented by this appeal are substantial and of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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APPENDIX

I.

OPINION OF THE CIRCUIT COURT FOR RACINE COUNTY

This is an action by the Town of Yorkville against the defendants for a violation of sec. 2.002 of the Ordinances of said town, passed October 13, 1949. The pertinent provision of the ordinance is as follows:

> "No such license shall be issued by the Town Board for any such trailer camp located in the Town wherein provision is made, or proposed to be made for the location of more than (25) trailers at any one time; and not more than (25) trailers shall be located in any licensed trailer camp in the Town at any one time."

The defendants admit having 31 trailers in their trailer camp on the date of the alleged violation.

The defendants have challenged the validity of the ordinance and declare the issues upon which they base their attack are as follows:

> "1. Are the provisions of Section 2.002 Ordinances of the Town of Yorkville, which limit the number of trailers that may be kept in any one camp at any one time to (25) an unreasonable exercise of the police power?
> "11. Does Sec. 66.058 Stats. (1953) authorize the Town Board to set a blanket limitation on the number of units that may be kept in a trailer camp without regard to the actual capacity of the camp? If so, is such provision constitutional?
>
> "111. Is the limitation provision of Section 2.002 Ordinances of the Town of Yorkville void as applied to de-

defendants because of their vested right to place more than (25) trailers in the camp?"

The defendants started work on their trailer camp in 1948, providing spaces for 47 trailers. They opened the trailer camp in 1949, and in October of that year, prior to the passage of sec. 2.002 of the ordinance, they had 23 ready for occupancy, the remaining 24 spaces having been graded, roadways staked out, drain tile, service head, switch boxes and meter installed. Thereafter they substituted the area in which the 24 spaces had originally been prepared to a one-acre plot to the west where 18 spaces were prepared, placing thereon the meters and switch boxes previously installed in the old area, which was thereafter used as a play ground.

The defendants' trailer camp is the only one in the Town of Yorkville and covers an area of six acres. It is located in the Badger School District, which in 1950 had an enrollment of 29 students, since increased to 35 in the 1956-57 school year. The school capacity is 35 students with a state recommendation of 25 to 30. The average number of persons per trailer is 2.4. The average trailer stays between three and four years. More than 50% of the trailers presently in the camp have been there a year or more. Two to three per cent of their total business is represented by trailers staying over night. At the present time there are 20 children living in the camp, and the number varies between 15 and 20 at all times. The defendants pay $5.00 per month per occupied unit to the town; $2.75 thereof being paid to the Badger School District and $1.25 to the high school district.

Considerable testimony has been offered with reference to the effect of the trailer camp on the health, safety and welfare of the town. It is established to the satisfaction of the Court that the trailer camp does not have adequate facilities for sewage disposal; that the present method of sewage disposal has an adverse effect upon the health of persons in the area, and that an adequate sewage disposal system for the camp would cost about $30,000.00, which would be adequate for 64 homes; that the trailer camp has an adverse effect upon the value of property in the area, which is zoned for agricultural purposes; that the larger the trailer camp the more objectionable it would be; that an increased number of trailers would not create an increased fire hazard; that the trailer camp does not present a law enforcement problem; and that the occupants of the camp are well-behaved and law abiding.

Is the 25 limit on the number of trailers that may be kept in any one trailer camp at one time an unreasonable exercise of the police power?

Sec. 60.27 of the Statutes of 1949 has been repealed and sec. 66.058 created with substantially the same provisions as contained in the prior enactment and counsel for both parties concede that 66.058 shall be made applicable to the issues involved herein. Sec. 66.058 (2) (b), Stats., provides:

> "In order to protect and promote the public health, morals and welfare and to equitably defray the cost of municipal and educational services required by persons and families using or occupying trailers, mobile homes, trailer camps or mobile home parks for living, dwelling or sleeping purposes, the city council in every city, the village board in every village and the town board in

> every town is hereby authorized and empowered to . . . limit the number of units, trailers or mobile homes that may be parked or kept in any one camp or park, . . ."

There is no question that trailer camps are a proper subject for regulation. *Midgarden v. City of Grand Forks,* (N.D.) (1952) 54 N. W. 2d 659, at page 662, the court stated:

> "Trailer camps or trailer parks have come to be known as limited areas within city limits where a large number of people live in portable trailers for longer or shorter periods of time, and sometimes even for years. By reason of undue concentration of population, lack of proper facilities for removal of rubbish, disposal of waste and sewage, they may create unsanitary conditions and endanger the health and welfare of the community. Because of these conditions trailer camps or trailer parks have become subject to municipal regulations throughout the United States."

See also: *Zullo v. Board of Health of Woodbridge Township,* (N. J. 1952) 88 A. 2, 625. While such regulation is not unlimited, 22 A. L. R. 2, 782, the Court is limited in its authority to declare invalid an ordinance passed under the town's police powers.

> " 'So, also, if it be said that a statute like the one before us is mischievous in its tendencies, the answer is that the responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom

annul statutes that had received the sanction of the people's representatives. We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizens against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the constitution. . . .' Atkin v. Kansas, 191 U. S. 207, 223, 224, 24 Sup. Ct. 124." *Milwaukee v. Raulf*, 164 Wis. 172 at page 188.

Likewise in *Midgarden v. City of Grand Forks, supra,* at page 664, citing with approval *Miller v. Public Works,* (Cal.) 234 P. 381, 385, the Court stated:

"'A large discretion is vested in the legislative branch of the government with reference to the exercise of the police power. Mehlos v. Milwaukee, 156 Wis. 591, 146 N. W. 882, 51 L. R. A., N. S., 1009, Ann. Cas. 1915C, 1102; (State ex rel.) Carter v. Harper, supra (182 Wis. 148, 196 N. W. 451). Every intendment is to be indulged by the courts in favor of the validity of its exercise and, unless the measure is clearly oppressive, it will be deemed to be within the purview of that power. It is only when it is palpable that the measure in controversy has no real or substantial relation to the public health, safety, morals, or general welfare, that it will be nullified by the courts. The courts may differ with the Legislature as to the wisdom and propriety of a particular enactment as a means of accomplishing a particular end, but as long as there are considerations of public health, safety, morals, or general welfare which the legislative body may have in mind, which could have justified the regulation, it must be

> assumed by the court that the legislative body had those considerations in mind and that those considerations did justify the regulation.' "

The defendants contend, however, that the limitation on the number of trailers to 25 is not related in any way to the general health, welfare, safety and morals of the people of the town of Yorkville. We agree that the town can set up adequate trailer camp standards to protect the general health and safety of the people of the township without limiting the number of trailers in any one camp to 25. We also agree that limiting the number of trailers to 25 has no relationship to protecting the morals of the people in the township. If we were dealing solely with the question of public health, morals and safety, we would not hesitate to declare the limitation of 25 trailers an arbitrary exercise of police power and therefore invalid. However, sec. 66.058 (2) (b), Stats., also empowers the town board to limit the number of trailers to protect the, ". . . welfare and to equitably defray the cost of municipal and educational services required by persons and families using or occupying trailers, mobile homes, trailer camps or mobile home parks for living, dwelling, or sleeping purposes. . . ."

In dealing with the broader term ,"general welfare," our court in *State ex rel. Carter v. Harper, supra,* stated:

> "Keeping in mind the foregoing principles, is the objective of an ordinance in the nature of a zoning regulation, which seeks to protect or preserve property values, embraced within the term 'general welfare?' It is the contention of counsel for relator that it is not, because such an ordinance does not tend to promote public health, safety, or morals. We consider this as

> entirely too restrictive an interpretation of the term 'general welfare.' As pointed out by the New York court of appeals in Wulfsohn v. Burden (1925) 241 N. Y. 288, 298, 150 N. E. 120, 122:
>
> " 'The (police) power is not limited to regulations designed to promote public health, public morals, or safety, or to the suppression of what is offensive, disorderly, or unsanitary, but extends to so dealing with conditions which exist as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity.' "

Trailers, by their very nature, are transitory and therefore lack the permanency for dwelling purposes conducive to the well-ordered development of the community. The basic nature of a trailer camp and the number of trailers therein make it extremely difficult, if not impossible, for a school district to adequately plan, under sound economic principles, for the education of the children in the district. It appears that the Badger School District has now reached its maximum capacity. To increase the number of trailers in the district to an unlimited number with a corresponding increase in the number of children who must be educated, would necessitate expansion of the school facilities. The school district is limited to its borrowing under sec. 67.03 (1), Stats., to 5% of the equalized value of the taxable property in the district. To have the school district go into debt to increase its school facilities in order to take care of the increased number of children occupying the trailer camp without permanency of residence of the building of permanent homes, would place upon the district a financial dilemma. It is obvious that the school district could not adequately plan for the future where there is no assurance

that the number of trailers would remain constant, or the camp closed. This situation was apparently recognized by the legislature when its authorized cities, villages and towns to limit the number of trailers that may be parked or kept in any one camp and to also limit the number of licenses for trailer camps in any common school district. To limit the number of trailer camps in any school district without limiting the number of trailers in each camp would accomplish no useful purpose in so far as the problems of the school district are concerned.

No case has been cited to the Court wherein this precise question has been dealt with, however, cases analogous to the instant case have been decided by courts of last resort in other jurisdictions. In the case of *Cady v. City of Detroit,* (1939) 286 N. W. 805, an ordinance prohibiting the parking of occupied trailers in trailer camps for more than an accumulated period of 90 days in any one year was attacked as being unconstitutional. Living conditions in the camp were found to be superior to substandard premises in which thousands of citizens of Detroit live. The city argued, among other things, that the ordinance was within the proper exercise of police power because of the school problem presented; the impossibility of foreseeing and making proper educational provision for transient children; the financial problems created by the shifting population incident to a trailer camp; and the lack of a permanent tax base. The court stated:

> "With regard to the section of the ordinance prohibiting the parking of occupied trailers in trailer camps for more than an accumulated period of 90 days in any

one year, we are of the opinion that such a provision is not unconstitutional."

* * *

"Ordinances having for their purpose regulated municipal development, the security of home life, the preservation of a favorable environment in which to rear children, the protection of morals and health, the safeguarding of the economic structure upon which the public good depends, the stablization of the use and value of property, the attraction of a desirable citizenship and fostering its permanency are within the proper orbit of the police power. Changes in such regulations must be sought through the ballot or the legislative branch."

The Michigan court again considered the problem in the case of *Loose v. City of Battle Creek,* (1944) 14 N. W. 2d 554, wherein an ordinance providing that a trailer could only be used as a dwelling for six weeks during each 12 month period regardless of sanitary regulations or morals and states:

"The length of time that a trailer coach may be used as a dwelling is a matter for the local law making body to determine. . . . In my opinion the ordinance is a reasonable exercise of the police power in the promotion of health, morals, safety and general welfare."

See also *Renker v. Village of Brooklyn,* (1942) 40 N. E. 2d 925. *Commonwealth v. McLaughlin,* (1951) (Pa.) 78 A. 2, 880.

The Court is of the opinion that the ordinance limiting the number of trailers that may be kept in any one camp to 25 is not an unreasonable exercise of police power.

> "Courts will not interfere with the exercise of police power by a municipal corporation in the absence of a clear abuse of discretion and unless it is manifestly unreasonable and oppressive, for it is not within the province of the courts, except in clear clases, to interfere with the exercise of this power reposed by law in municipal corporations. 11 Am. Jur., Constitutional Law, p. 1092, sec. 307. Municipal corporations are prima facie the sole judges respecting the necessity and reasonableness of ordinances under their police power, and every intendment is to be made in favor of the lawfulness and reasonableness of such ordinance. The city is presumed to have full knowledge of local conditions, and its adoption of an ordinance in the light of this knowledge creates a prima facie presumption that it is reasonable. 3 McQuillin, Mun. Corp. (2d Ed.) p. 110, sec. 951. The reasonableness of an ordinance depends upon the purpose sought to be accomplished and the effect upon all who must comply with it." *Dyer v. City Council of Beloit*, 250 Wis. 613, p. 616.

The Court is further of the opinion that sec. 66.058, Stats., is not constitutional. *Cady v. City of Detroit, supra.*

The third contention of the defendants is that they have acquired a vested right to place more than 25 trailers in their camp.

It appears that prior to the passage of sec. 2.002 of the ordinances in October, 1949, the defendants acquired sufficient land to operate a trailer camp of a size considerably in excess of 25 trailers, and had prepared 47 spaces of which 23 were ready for occupancy. The cost thereof amounting to about $1,000.00 per lot or space.

It is clear that the same principles of law are applicable to sec. 2.002 of the ordinance as would be applicable to zon-

ing ordinances, therefore the ordinance in the instant case cannot operate retrospectively. *Des Jardin v. Greenfield*, 262 Wis. 43. In the *Building Height Cases*, 181 Wis. 519, on page 531, the court stated:

> "The provision of the law is that 'no building shall be erected,' etc. Plainly it does not contemplate the razing of buildings heretofore erected in cases above the specified heights. Just as plainly it prohibits the erection of any buildings hereafter exceeding the specified heights. It is silent concerning buildings in the process of erection at the time the law took effect. A construction of a statute which gives it a retrospective effect is not favored, and this is especially true where vested rights are affected. In 25 Ruling Case Law, 787, it is said:
>
> "'Every law that takes away or impairs rights that have vested under existing laws is generally unjust and may be oppressive. Hence such laws have always been looked on with disfavor.'
>
> "Without negativing the power of the legislature to make the law applicable to buildings then in the course of construction, we are clear that it should not be so construed where substantial rights had vested prior to the enactment of the law which would be unreasonably injured by such a construction unless such a purpose is clearly made to appear by the language of the act itself. It is apparent that the telephone company had conceived the purpose of erecting a sixteen-story building several years before the passage of the act and pursuant to such purpose did actually erect the first eight stories, postponing the construction of the remaining portion of the building until its necessities should require the further construction. It further appears that long before the passage of the act the telephone company in good faith not only resolved but

actually arranged for the completition of its original plans and to that end had incurred great expense. To construe this law as applying to the telephone company's building would work great hardship, a serious invasion of vested rights, and would give to the statute a retrospective effect which should not be given in the absence of a plain legislative purpose. We are unanimously of the opinion that the act does not apply to the building of the defendant telephone company, and that the demurrer to the answer was properly overruled."

The plaintiff argues that no vested right has attached inasmuch as such rights are not created by the mere use of land, and in support thereof cite *Eggebeen v. Sonnenburg*, 239 Wis. 213. We do not understand that this case is as restrictive in its application as contended for by the plaintiff. In that case the Court stated:

> "The theory of vested rights relates only to such rights as an owner of property may possess not to have his property rezoned after he has started construction. *The rationale of such cases is that he has entered on construction work or incurred liabilities for that work which he would be deprived of by the rezoning.*" (Emphasis supplied)

The plaintiff further cites *Omaha v. Glissman*, (1949) 39 N. W. 2d 828. However, the court stated on page 834:

> "We have come to the conclusion that if, after a purchase or leasing thereof, a permit is obtained to use lands for a use then permissible under the zoning ordinances and either substantial construction is made thereon or substantial liabilities are incurred relating directly thereto, or both, before the permit is cancelled or revoked then the right to such use has become es-

tablished and vests as a permissive nonconforming use which cannot be affected by a subsequent change." See also 22 A. L. R. 2d 797.

The defendants having made substantial improvements upon the property so as to provide spaces for 47 trailers prior to the passage of sec. 2.002 of the ordinances, have acquired a vested right to the use of their trailer camp for that number of trailers.

The Court is of the opinion that the limitation of 25 trailers does not apply to the defendants inasmuch as they have a vested right to place 47 trailers in their trailer camp as a nonconforming use. The defendants may submit findings of fact and conclusions of law in conformity herewith and judgment may be entered accordingly.

Dated this 3 day of June, A. D., 1957.

s/ ELMER D. GOODLAND
Circuit Judge

II.

OPINION OF SUPREME COURT, STATE OF WISCONSIN

APPEAL from a judgment of the Circuit Court for Racine County: ELMER D. GOODLAND, Circuit Judge. *Reversed.*

Action to collect a forfeiture for violation of a town ordinance limiting the number of trailer spaces in any trailer camp. The judgment dismissed the complaint.

On October 13. 1947, the town adopted an ordinance which limited each trailer camp in the town to the opera-

tion of not more than 25 trailer spaces. This was done in reliance upon sec. 66.058 (2) (b), Stats., providing that municipal legislative bodies, including town boards, may limit the number of units, trailers or mobile homes that may be parked or kept in any one camp or park, and may also limit the number of licenses for trailer camps or parks in any common school district.

Before the ordinance was adopted the defendants had established a trailer camp which contained 23 trailer spaces already completed and 24 spaces partially completed.

After the adoption of the ordinance defendants purchased an additional acre of land. This was large enough to accommodate 18 trailer spaces. They moved the electrical equipment from the partially completed 24 space location to the new acre, installed it there and otherwise completed new spaces there for 18 trailers. The land from which the 24 space installations were removed was converted into a playground for the enjoyment of trailer tenants. The drainage tile and grading originally done there remained in place.

Action was brought by the town to collect a forfeiture provided for violation of its ordinance. The Circuit Court, by judgment dated July 22, 1957, dismissed plaintiff's complaint with costs. The trial court found as facts that the 25 trailer space limitation by the ordinance is not related to the protection of the public health, morals and safety of the people of the town; but that this limitation *is* related to the general welfare of the people of the town by protecting the school district of the town from overcrowded facilities and enabling the school district to plan for necessary expansion.

The court further found that before October 13, 1949, the defendant had acquired sufficient land for 47 trailer spaces of which 23 spaces were ready for use and substantial improvements for similar use had been made on the remaining 24 spaces.

As conclusions of law the trial court held that sec. 66.058 (2) (b), Stats., which enables the town to place a limit of 25 trailers in any licensed camp without regard to the physical facilities and capacities of the camp is not an unconstitutional grant of power, and that the ordinance limiting the number of trailers to 25 at any one time is not unconstitutional. The court then held that the ordinance does not apply to the defendants and their camp because under the circumstances defendants have a vested right to place 47 trailers in their camp as a non-conforming use.

The town contends that the trial court erred in holding that the defendants have a vested right to a non-conforming use. The defendants, while upholding that conclusion of the court, have moved to review the trial court's conclusion that the ordinance is valid. All the issues, therefore, are brought before the Supreme Court as they were before the trial court.

The trial court filed a memorandum decision in which, among other things, it stated:

> ". . . It is established to the satisfaction of the Court that the trailer camp does not have adequate facilities for sewage disposal; that the present method of sewage disposal has an adverse effect upon the health of persons in the area, and that an adequate sewage disposal system for the camp would cost about $30,000.00, which would be adequate for 64 homes; that

the trailer camp has an adverse effect upon the value of property in the area, which is zoned for agricultural purposes; that the larger the trailer camp the more objectionable it would be; that an increased number of trailers would not create an increased fire hazard; that the trailer camp does not present a law enforcement problem; and that the occupants of the camp are well-behaved and law abiding."

The court further said:

". . . We agree that the town can set up adequate trailer camp standards to protect the general health and safety of the people of the township without limiting the number of trailers in any one camp to 25. We also agree that limiting the number of trailers to 25 has no relationship to protecting the morals of the people in the township. If we were dealing solely with the question of public health, morals and safety, we would not hesitate to declare the limitation of 25 trailers an arbitrary exercise of police power and therefore invalid. . . ."

Other facts will be stated in the opinion.

BROWN, J. In *Des Jardin v. Greenfield,* (1952) 262 Wis. 43, 53 N. W. (2d) 784, we declared that the same principles of constitutionality apply to trailer ordinances that apply to zoning ordinances. The course of the power of the legislature to authorize their enactment is dependent on the same general police power.

The power to pass ordinances must be reasonably exercised but within the field delegated it may go to the boundaries of reason and within that field the municipality's discretionary power is supreme. *C. Beck Co. v. Milwaukee,* (1909) 139 Wis. 340, 348, 120 N. W. 293. When a

municipal body enacts regulations pursuant to authority expressly granted all presumptions are in favor of its validity and any person attacking the ordinance must make the fact of its invalidity clearly appear. The function of a reviewing court is solely for the purpose of determining whether legislative action under the power delegated to the municipality passed the boundaries of its limitations or exceeded the boundaries of reason. The delegation to the municipality of this power by the legislature implies a field of legislative discretion within which its acts are not subject to judicial review. It is only when the bounds of that field are clearly exceeded that courts will deny validity to the ordinance. *La Crosse v. Elbertson,* (1931) 205 Wis. 207, 211, 237 N. W. 99.

Trailer camps in recent years have become so common that it is not beyond the bounds of reason that the legislature may believe that such camps, with their collection of small mobile homes, present definite problems of health, safety, morality and general welfare in the area which is affected by the presence of such camps. Granting that problems of this nature are presented, it is not beyond the bounds of reason to believe that the larger the concentration of mobile homes the greater or more intense the problems will become, and, conversely, the problems will be diminished by camps less densely populated. The legislature, then, may authorize the municipalities most directly concerned to apply their local knowledge to the local problem and attempt to deal with it by regulating the number and population of the camps to a point where the municipality may tolerate the problems which such camps present.

We have said:

> ". . . Courts will not interfere with the exercise of police power by a municipal corporation in the absence of a clear abuse of discretion and unless it is manifestly unreasonable and oppressive, for it is not within the province of the courts, except in clear cases, to interfere with the exercise of this power reposed by law in municipal corporations. 11 Am. Jur., Constitutional Law, p. 1092, sec. 307. Municipal corporations are *prima facie* the sole judges respecting the necessity and reasonableness of ordinances under their police power, and every intendment is to be made in favor of the lawfulness and reasonableness of such ordinance. The city is presumed to have full knowledge of local conditions, and its adoption of an ordinance in the light of this knowledge creates a *prima facie* presumption that it is reasonable. 3 McQuillin, Mun. Corp. (2d ed.) p. 110, sec. 951. The reasonableness of an ordinance depends upon the purpose sought to be accomplished and the effect upon all who must comply with it." *Dyer v. City Council of Beloit* (1947), 250 Wis. 613, 616, 27 N. W. (2d) 733.

We need not pass on the trial court's conclusion that in reference to public health, safety and morality the 25 space limit by the ordinance was arbitrary and invalid. It sustained the ordinance because of its reasonable relationship to the welfare of the school district. In this, we concur.

Testimony of the school authorities establishes that the district school of the area in which this camp is situated is populated beyond its facilities. According to the recommendation of the State Department of Public Instruction the school is equipped for thirty students. The present enrollment is 35 students. In recent years the trailer camp

has furnished five, six or seven pupils yer year. In its memorandum decision the learned trial court well said:

> "Trailers, by their very nature, are transitory and therefore lack the permanency for dwelling purposes conducive to the well-ordered development of the community. The basic nature of a trailer camp and the number of trailers therein make it extremely difficult, if not impossible, for a school district to adequately plan, under sound economic principles, for the education of the children in the district. It appears that the Badger School District has not reached its maximum capacity. To increase the number of trailers in the district to an unlimited number with a corresponding increase in the number of children who must be educated, would necessitate expansion of the school facilities. The school district is limited in its borowing under sec. 67.03 (1), Stats., to 5% of the equalized value of the taxable property in the district. To have the school district go into debt to increase its school facilities in order to take care of the increased number of children occupying the trailer camp without permanency of residence or the building of permanent homes, would place upon the district a financial dilemma. It is obvious that the school district could not adequately plan for the future where there is no assurance that the number of trailers would remain constant, or the camp closed. This situation was apparently recognized by the legislature when it authorized cities, villages and towns to limit the number of trailers that may be parked or kept in any one camp and to also limit the number of licenses for trailer camps in any common school district. To limit the number of trailer camps in any school district without limiting the number of trailers in each camp would accomplish no useful purpose in so far as the problems of the school district are concerned."

The ordinance reasonably tends to stablize the problems created by the transient nature of mobile home life to a point where school districts may cope with them.

We concur in the trial court's decision that neither the statute nor the ordinance in question here are unconstitutional.

The trial court held that the defendants had acquired vested rights to operate 47 trailer spaces, in spite of the ordinance limit of 25, because they had fully completed 23 spaces and partially completed 24 other spaces at the time the ordinance was adopted. We consider that the court was mistaken in its conception of vested rights to a non-conforming use. The right is to continue the use of a property which use has already been undertaken at the time when the law is changed. This principle would have protected the defendants in continuing their development and use of the 24 spaces under construction. But they did not have a vested right to operate a 47 space trailer camp wherever they please. After passage of the ordinance the defendants bought another parcel of land, pulled up a part of their equipment and with it improved the new parcel. This is not a continuance of the use of property already undertaken at the date of the ordinance but is an attempted extension of the non-conforming use to new property. Non-conforming uses are closely watched and limited and are not to be enlarged in derogation of the general scheme of the ordinance for the use of property. *Hay v. Board of Adjustment*, (1955) 37 N. J. Super. 461, 117 A. 2d 650, 651; *Sitgreaves v. Board of Adjustment*, (1947) 136 N. J. L. 21, 54 A. 2d 451, 455; McQuillin, Mun. Corp., (3d ed. Rev.) p. 476, sec. 25.184.

There is no doubt that the original 24 space parcel was discontinued as space for trailers. Its equipment was removed and the property developed for other uses. Whether or not this was an abandonment of the right to operate trailers there is not presented to us. The defendants do not attempt to operate trailers there nor do they claim a right to do so. What they are doing is attempting to transfer their right to operate trailer spaces in that location to another locality. Their non-conforming use is not ambulatory. They cannot shift it to the property which they acquired after the passage of the ordinance.

The judgment should be reversed with directions to grant the relief demanded by the complaint.

By the Court. Judgment reversed, cause remanded with directions to grant the relief demands by the complaint.

III.

JUDGMENT OF CIRCUIT COURT OF RACINE COUNTY, WISC.

At the regular October, 1956 term of the Circuit Court, in and for Racine County, Wisconsin, and on the 29 day of March, 1957, during said term, the Honorable Elmer D. Goodland, Circuit Judge, presiding.

The above entitled action coming on for trial before the Court and without a Jury on the 29 day of March, 1957, the Honorable Elmer D. Goodland, Circuit Judge, presiding; the plaintiff appearing by H. H. BROWN, its attorney, and LaFRANCE, THOMPSON, GREENQUIST, ZAHN & DYE, by KENNETH L. GREENQUIST, of counsel, and the de-

fendants appearing in person and by LEPP & PHILLIPS, by DAVID L. PHILLIPS and BURTON LEPP, their attorneys, and the Court having filed its Findings of Fact and Conclusions of Law on June 24, 1957 wherein Judgment was ordered for the defendants.

NOW, THEREFORE, on motion of LEPP & PHILLIPS, attorneys for the defendants,

IT IS ORDERED, ADJUDGED AND DECREED that the Complaint of the plaintiff be and the same is hereby dismissed upon its merits, and that the defendants recover costs and disbursements as taxed and allowed in the sum of FORTY-EIGHT DOLLARS SEVENTY CENTS ($48.70).

Entered this 22nd day of July, 1957.

BY THE COURT:

s/ EDW. F. DALY
Clerk

IV.

JUDGMENT OF THE SUPREME COURT OF WISCONSIN

(Filed Feb. 28, 1958)

This cause came on to be heard on appeal from the judgment of the Circuit Court of Racine County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Racine County, in this cause, be, and the same is hereby, reversed with costs against the

said respondents taxed at the sum of Four Hundred Forty-seven Dollars and Fifty-five Cents ($447.55).

And that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to grant the relief demanded by the complaint.

V.

ORDER OF SUPREME COURT OF WISCONSIN DENYING REHEARING

(Filed May 6, 1958)

And afterwards to-wit on the 6th day of May, A. D. 1958, the same being the 65th day of said term, the following proceedings were had in said cause in this Court:

The Court being now sufficiently advised of and concerning the motion of the said respondents for a rehearing in this cause, it is now here ordered that said motion be, and the same is hereby, denied with $25.00 costs.